

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, ADMINISTRATOR, ET AL.  
PLAINTIFFS

V.

JEFFREY DERDERIAN, ET AL.  
DEFENDANTS

C.A. NO. 04-312L

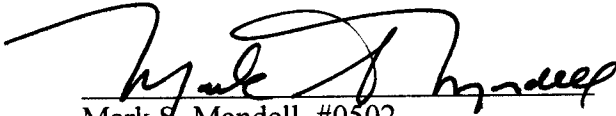
**MOTION FOR PARTICULARIZED NEED DISCOVERY**

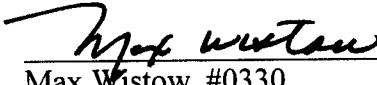
Plaintiffs file this motion seeking production from the Defendants State of Rhode Island and Town of West Warwick of representative samples of the polyurethane foam seized by state and local law enforcement authorities from the Station Nightclub in the immediate aftermath of the fire which occurred on February 20, 2003. Specifically, Plaintiffs seek sequestration of one square foot of foam from 1) each of the sheets of foam seized from the site of the Station Fire now in the possession of the State of Rhode Island and/or the Town of West Warwick and 2) any control samples retained by the State of Rhode Island from the foam samples provided to its expert, Joseph Zicherman for testing.

Plaintiffs rely on the accompanying memorandum of law as support for this motion.

Plaintiffs No. 13d and e, 17 through 63, inclusive,  
133 through 190, inclusive, and 225 and 226

By their attorneys,

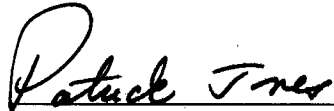
  
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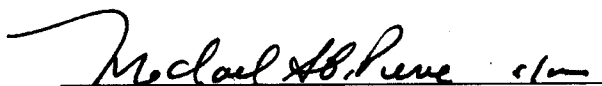
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I certify that on the 5<sup>th</sup> day of January, 2005, I served a true copy of the within document via first-class mail, postage prepaid, to the following parties:

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Ruth A. Kelly

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, ADMINISTRATOR, ET AL.  
PLAINTIFFS

V.

JEFFREY DERDERIAN, ET AL.  
DEFENDANTS

C.A. NO. 04-312L

**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PARTICULARIZED NEED DISCOVERY**

In the immediate aftermath of the Station Fire, a number of sheets of polyurethane foam (believed to be at least four) were seized by government authorities from the basement of the nightclub. This foam has been in the possession of the State of Rhode Island and/or Town of West Warwick since that time.

The state has already subjected some of this foam to destructive testing by its expert, Joseph Zicherman. It is presently unknown how much foam has been consumed by this testing.

On or about September 24, 2004 in open court in the state criminal proceeding, the Attorney General's office on behalf of the State of Rhode Island represented on the record that it would inform the undersigned Plaintiffs' counsel of any intention to perform testing on the polyurethane foam in its possession so that Plaintiffs' counsel could take whatever action they deem appropriate.

The Attorney General's office has now informed Plaintiffs' counsel that it plans to conduct further destructive testing that will consume forty-eight (48) square feet of the approximately seventy-one (71) square feet of foam in the State's possession.

This motion for particularized need discovery is very narrowly limited to a request for the entry of an order requiring the Defendants State of Rhode Island and Town of West Warwick to produce a one square foot section of foam from 1) each sheet of foam or portion thereof still in

existence and in the possession of the State of Rhode Island and/or Town of West Warwick and 2) any control samples of foam retained by the State of Rhode Island from the foam samples provided to its expert, Joseph Zicherman for testing.

Plaintiffs request that these one square foot sections of foam be deposited in the evidence warehouse in Cranston which is under the supervision of this court and is being maintained jointly by Plaintiffs and defense counsel. Such preservation will insure the integrity and continued existence of this extremely important evidence.

Plaintiffs need this foam preserved so that it can be used in future testing which is described in the accompanying Affidavit of Plaintiffs' expert, Carl L. Duncan. See Affidavit of Carl L. Duncan attached hereto as Exhibit "A". In his affidavit, Mr. Duncan sets forth the testing presently contemplated for these one square foot sections of foam. See Paragraphs 9A - D and 10A - E of the Duncan Affidavit. The purpose of the proposed testing is to, among other things, identify the manufacturer(s) of the foam. See Duncan Affidavit at Paragraph 10, P. 4.

Plaintiffs believe that there will be no prejudice to the Defendants State of Rhode Island and/or Town of West Warwick or the Defendants in the criminal case by the removal of such a small, yet critically important amount of foam from each remaining sheet of foam (which are each approximately 4' x 8' in dimension).

Plaintiffs have filed a declaratory judgment action in State court, a copy of which is attached hereto as Exhibit "B".

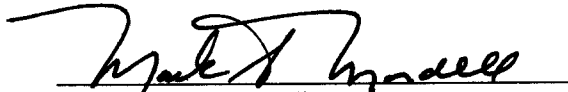
### **CONCLUSION**

Accordingly, Plaintiffs request entry of an order compelling Defendants State of Rhode Island and/or Town of West Warwick to produce to Plaintiffs for storage in the Station Fire evidence warehouse one square foot of foam from 1) each sheet of foam still in existence and in the possession of the State of Rhode Island and/or Town of West Warwick and 2) any control

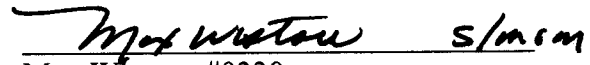
samples of foam retained by the State of Rhode Island from the foam samples provided to its expert, Joseph Zicherman for testing.

Plaintiffs No. 13d and e, 17 through 63, inclusive,  
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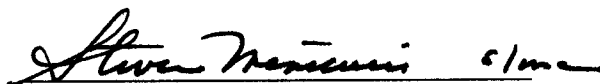
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## **CERTIFICATION**

I certify that on the 5<sup>th</sup> day of January, 2005, I served a true copy of the within document via first-class mail, postage prepaid, to the following parties:

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Kathleen A. Wells



## **AFFIDAVIT OF CARL L. DUNCAN FIRE ANALYST**

1. I am a fire analyst with over thirty-six (36) years experience in fire fighting, fire investigation, code enforcement and fire incident analysis.
2. I have over seventeen (17) years of municipal fire service with over ten (10) years in fire investigation and fire safety inspection. I have been certified by the California State Department of Education, fire service training program in fire investigation, fire inspection and fire command at their highest level.
3. I obtained a degree in fire science in 1969 from Santa Ana College. I obtained a vocational teaching credential from the California Department of Education and was assigned to that department for the purpose of developing an educational curriculum for Fire Investigation and Fire Code enforcement.
4. I have taught college level courses in fire cause and origin, fire investigation, fire and building codes and ordinances, fire protection systems and fire defense planning.
5. I am president of CLD Associates, LLC, a company I founded in 1980, for the purpose of providing consulting services in fires, explosions and related fire analysis issues.
6. I have coordinated the investigation and analysis of numerous large life and property loss incidents including:
  - 1 The Beverly Hills Supper Club fire – 167 fatalities
  - 2 The MGM Grand Hotel fire – 87 fatalities
  - 3 The Las Vegas Hilton Hotel fire
  - 4 The San Juan Dupont Plaza Hotel fire – 97 fatalities
  - 5 The Happyland Social Club fire in New York – 100 fatalities
  - 6 The Pepcon Rocket Fuel Oxidizer Plant fire and detonation
  - 7 The Imperial Foods Plant fire, Hamlet, NC – 25 fatalities
7. I have been retained by the plaintiffs' steering committee in the matter of The Station nightclub fire. I spent more than six (6) weeks coordinating the analysis of this fire incident including the removal and retention of artifacts in the form of "Egg Crate" foam.

8. I have advised the members of the plaintiffs' steering committee of the need to test, at a minimum, one (1) square foot of foam both from 1. each of the sheets of foam seized from the site of the Station fire now in the possession of the State of Rhode Island and/or the West Warwick Police; and 2. any control samples retained by the State of Rhode Island from the foam samples provided to its expert Dr. Zicherman for testing. A control sample is a representative section of foam from a larger piece of foam which itself has been consumed by destructive testing.
9. The testing to be performed on these one (1) square foot samples of foam will use, among other techniques, the following:

a. STEREOMICROSCOPY (SM)

Initial analysis will be under the stereomicroscope at magnifications from approximately 5X to 70X. The morphology, homogeneous/heterogeneous nature, physical structure and overall nature of a sample will be observed and recorded. Samples will be photographed through the stereomicroscope, if appropriate.

b. FOURNIER TRANSFORM INFRARED (FTIR) SPECTROSCOPY

FTIR spectroscopy is one of the most frequently used techniques for identification of organic (carbon based) materials. Some inorganic compounds can also be identified by this method. The technique involves measuring the absorption as a function of wavelength of an infrared radiation (IR) beam which is either transmitted through the sample or reflected by it. The intensities and wavelengths of IR absorbed by the sample are directly related to the chemical functional groups within the sample. By comparing the intensity versus wavelength spectrum with those of reference standards, specific compounds can be identified.

c. SCANNING ELECTRON MICROSCOPY (SEM)

In the scanning electron microscope (SEM), samples are bombarded in a vacuum chamber using a focused beam of electrons. These electrons interact with the sample in numerous ways including producing secondary electrons, backscattered electrons, and x-rays.

d. ENERGY DISPERSIVE SPECTROMETRY (EDS) and WAVELENGTH DISPERSIVE SPECTROMETRY (WDS)

X-rays generated by the SEM's electron beam are used for determining the qualitative elemental composition of an excited area of a sample. The x-rays are usually detected with an energy dispersive system (EDS), which determines all the elements present above the detection limit in the sample which is approximately 0.1 wt. %. For better sensitivity, especially for trace amounts, a wavelength dispersive system (WDS), which has a detection limit of 10 ppm, can be used.

10. The testing to be performed on these one (1) square foot samples of foam includes, but is not limited to, the following:

a. Bulk density

The bulk density of the foam will be determined by cutting cubes of foam, measuring their dimensions, weighting the cubes, and calculating the bulk density according to ASTM Standard Test Method D3574-A. This test will be performed in triplicate on each foam sample.

b. Surface Area

The surface area will be determined by measuring the foam and calculating the surface area. This test will be performed in triplicate on each foam sample.

c. Pore Size

The pore size of the foam samples will be determined by cutting several sections from each sample, coating them with gold/palladium to increase the conductivity in the SEM, and obtaining images. These images will be analyzed by an off-line particle-sizing program to provide data for the size distribution of the pores over an area of specified dimensions. Several images will be analyzed and summed to compensate for the cut surfaces containing many pores that are not cut through the center.

d. Composition

The composition of the foams will be obtained by FTIR spectroscopy to identify the base polymer. EDS will be used to identify major and minor elements. WDS will be used for qualitative analysis of trace elements.


e. At a later date a cone calorimeter test can be performed on part of the samples.

11. The purpose of this testing is, in part, to identify the manufacturers of the foam. The need to perform these tests on samples from each sheet of foam seized from the fire site stems from the fact that two manufacturers sold foam to American Foam Corporation shortly before the sale to the Derderians on June 27, 2000.

  
Carl L. Duncan

State of Kentucky  
County of Boone

SUBSCRIBED AND SWORN to before me by Carl L. Duncan, on this 28<sup>th</sup>  
day of December, 2004.

  
Notary Public  
Commonwealth of Kentucky

My Commission Expires: 9-15-05

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

|     |   |   |                      |
|-----|---|---|----------------------|
| 1.  | Albert L. Gray, Adm. of the Estate of Derek Gray, and on behalf of Jani L. Gray-McGill, minor child of the decedent, Derek Gray;  | ) | CIVIL ACTION         |
|     |   | ) | NO.                  |
| 2.  | Joanne O'Neill, Adm. of the Estate of Nicholas O'Neill;   | ) |                      |
| 3.  | Marie G. Morton, Adm. of the Estate of Jason R. Morton, individually as wife and surviving spouse of the decedent, Jason R. Morton, and as mother and next friend of Kaitlin Marie Morton and Ashley Marie Morton, minor children of the decedent, Jason R. Morton; | ) |                      |
| 4.  | Angel O. Amitrano, Adm. of the Estate of Thomas A. Barnett;   | ) |                      |
| 5.  | Joanne L. Mitchell and William Mitchell, Co-Adm. of the Estate of Donna M. Mitchell, and Joanne L. Mitchell, as guardian and next friend of Brooklyn Belanger and Joslynn Belanger, minor children of the decedent, Donna M. Mitchell;                              | ) | VERIFIED COMPLAINT   |
|     |   | ) | FOR                  |
| 6.  | Scott J. Viera, Adm. of the Estate of Kelly Lynn Viera, and as husband and surviving spouse of the decedent, Kelly Lynn Vieira, and as father and next friend of Crystle Vieira, minor child of the decedent, Kelly Lynn Vieira;                                    | ) | DECLARATORY JUDGMENT |
| 7.  | Patricia Avilez, Adm. of the Estate of Eugene Avilez;   | ) |                      |
| 8.  | Jennifer L. Young, Adm. of the Estate of Robert Daniel Young and as wife and surviving spouse of the decedent, Robert Daniel Young;   | ) |                      |
| 9.  | Leonard Angers, Adm. of the Estate of Stacie J. Angers;   | ) |                      |
| 10. | Dorothy Marion, Adm. of the Estate of Thomas Frank Marion, Jr.;   | ) |                      |
| 11. | Yvette Fresolo, on behalf of the Estate of Michael Fresolo, and as wife and surviving spouse of the decedent, Michael Fresolo, and as mother and next friend of Maria Fresolo and Emily Fresolo, minor children of the decedent, Michael Fresolo;                   | ) |                      |
| 12. | Heidi Peralta Longley, as parent of and for the benefit of AceyTy Longley, minor child of the decedent, Ty Longley;   | ) |                      |
| 13. | Katherine Shubert, on behalf of the Estate of   | ) |                      |

- Mitchell Shubert, and as wife and surviving spouse of the decedent, Mitchell Shubert, and as mother and next friend of Melissa Cara Shubert, minor child of the decedent, Mitchell Shubert; Maryanne Shubert, as minor daughter at the time of death of Mitchell Shubert, and Laura Shubert, as mother and next friend of Mitchell J. Shubert, Jr., minor child of the decedent, Mitchell Shubert;
14. Eileen L. DiBonaventura, Adm. of the Estate of Albert DiBonaventura;
15. Donna DeBoard, Adm. of the Estate of Daniel Frederickson, and on behalf of Amanda Frederickson, Ryan Frederickson, Amber Frederickson and Kenneth Frederickson, minor children of the decedent, Daniel Frederickson;
16. Judith Marie Croteau, Adm. of the Estate of her son, Robert J. Croteau;
17. Warren L. Baker, III and John J. Decosta, III, Co-Adm. of the Estate of Mary H. Baker and John J. Decosta, III as the natural and legal guardian of the persons and estates of Alison M. Decosta, John R. Decosta, Scott A. Decosta and Michael J. Decosta, minor children of the decedent, Mary H. Baker, and Warren L. Baker, III, as husband and surviving spouse of Mary H. Baker;
18. Dorothy E. Bonardi, Adm. of the Estate of William C. Bonardi, III;
19. Denise M. McGregor and Nancy Depasquale, Co-Adm. of the Estate of Alfred C. Crisostomi and Denise M. McGregor as mother and next friend of Brandon M. Crisostomi, minor child of the decedent, Alfred C. Crisostomi;
20. Eileen Dunn as surviving spouse of Kevin Dunn and mother and next friend of Joanna Dunn, minor child of the decedent, Kevin Dunn;
21. Anthony J. Durante as father and next friend of Anthony Durante and Matthew Durante, minor children and wrongful death beneficiaries of the decedent, Lori K. Durante;
22. Lorian Gooden, Adm. of the Estate of James F. Gooden, and Lorian Gooden, individually as wife and surviving spouse of the decedent, James F. Gooden;
23. Claire H. Bruyere, Adm. of the Estate of Bonnie L. Hamelin;
24. John M. Hoban, Adm. of the Estate of Andrew

- R. Hoban; )
25. Paula A. McLaughlin, Adm. of the Estate of )  
Michael B. Hoogasian; )
26. Paula A. McLaughlin, Adm. of the Estate of )  
Sandy L. Hoogasian; )
27. Maria Latulippe, Adm. of the Estate of Dale L. )  
Latulippe and as the natural and legal guardian )  
of the person and estate of Dustin T. Latulippe, )  
minor child of the decedent, Dale L. Latulippe; )
28. John A. Longiaru and Sus Longiaru, Co-Adm. )  
of the Estate of John M. Longiaru; )
29. Sarah R. Mancini and Anthony B. Mancini, Co- )  
Adm. of the Estate of Keith A. Mancini; )
30. Barbara Magness, Adm. of the Estate of Steven )  
R. Mancini; )
31. Paul A. Morin, Adm. of the Estate of Ryan M. )  
Morin; )
32. Roderick Prouty, Nancy A. Lee and Paula )  
Woodcock, Co-Adm. of the Estate of Christopher )  
Prouty and Paula Woodcock as mother and next )  
friend of Makayla Woodcock, the minor child of )  
the decedent Christopher Prouty; )
33. Susan Sylvia, Adm. of the Estate of Kevin )  
Anderson, Melinda Bloomingburgh, as )  
mother and next friend of Kevin Gage, minor )  
child of the decedent, Kevin Anderson, and )  
Sheila Palumbo, as mother and next friend of )  
Brandon Palumbo, minor child of the decedent, )  
Kevin Anderson; )
34. Ray F. Beauchaine, Sr., Adm. of the Estate of )  
Laureen Beauchaine, Ray Beauchaine, Jr., )  
individually as husband and surviving spouse )  
of the decedent, Laureen Beauchaine, and Ray )  
Beauchaine, Jr., as father and next friend of )  
Ray F. Beauchaine, III, Christopher R. Beauchaine )  
and Ashley Beauchaine, minor children of the )  
decedent, Laureen Beauchaine; )
35. Sally Blom and Rolland Blom, Co-Adm. of the )  
Estate of Steven Blom, and Sharon Colpitts as )  
mother and next friend of Steven Blom, Jr., a )  
minor child of the decedent, Steven Blom; )
36. Catherine Cabral, Adm. of the Estate of Richard )  
Cabral, Jr., Catherine Cabral, individually as )  
wife and surviving spouse of the decedent, )  
Richard Cabral, Jr., and Catherine Cabral, as )  
mother and next friend of Christine Cabral and )  
Richard Cabral, III, minor children of the )  
decedent, Richard Cabral, Jr.; )

37. William H. Cartwright, Jr., Adm. of the Estate of William W. Cartwright; )
38. Katherine Cordier and Ronald J. Cordieri, Co-Adm. of the Estate of Michael Cordier; )
39. Mark D'Andrea, Adm. of the Estate of Lisa D'Andrea; )
40. Peter M. DiRienzo, Adm. of the Estate of Christina DiRienzo, Peter M. DiRienzo, individually as husband and surviving spouse of the decedent, Christina DiRienzo, Peter M. DiRienzo, as father and next friend of Beau DiRienzo, minor child of the decedent, Christina DiRienzo, and Peter M. DiRienzo, Jr., as minor son of the deceased, Christina DiRienzo at the time of her death; )
41. Lawrence E. Fick, Adm. of the Estate of Charline E. Fick, and Lawrence E. Fick, as father and next friend of Samantha Fick and William Fick, minor children of the decedent, Charline E. Fick; )
42. Timothy J. Fleming, Adm. of the Estate of Thomas J. Fleming; )
43. Dean DePietro, Adm. of the Estate of Rachel K. Florio-DePietro, and Dean DePietro, as father and next friend of Adrian DePietro, a minor child of the decedent, Rachel K. Florio-DePietro; )
44. James C. Gahan, III, Adm. of the Estate of James C. Gahan, IV; )
45. Sandra L. Greene, Adm. of the Estate of Scott C. Greene, and Sandra L. Greene, individually as wife and surviving spouse of the decedent, Scott C. Greene; )
46. Bruce G. Pollock, Esq., Adm. of the Estate of Scott S. Griffith, and Nancene Cohen as guardian of the Estate and next friend of Kacie L. Griffith, a minor child of the decedent, Scott S. Griffith; )
47. Bonnie A. Hoisington, Adm. of the Estate of Abbie L. Hoisington; )
48. Carlton L. Howorth, Jr., Adm. of the Estate of Carlton L. Howorth, III, and Karen E. Howorth, individually and as mother and next friend of Elizabeth Howorth, a minor child of the decedent, Carlton L. Howorth, III; )
49. George F. Phelan, Esq., Special Adm. of the Estate of Lisa Kelly; )
50. Evelyn L. King, Adm. of the Estate of Tracy F. King, Evelyn L. King, individually as wife and )



- surviving spouse of the decedent, Tracy F. King, )  
Evelyn L. King, as mother and next friend of )  
Joshua King and Jacob King, minor children of )  
the decedent, Tracy F. King and Rozilyn Guy, as )  
mother and next friend of Jordan King, minor )  
child of the decedent, Tracy F. King; )  
51. Barbara A. Kulz and George A. Kulz, Co-Adm. )  
of the Estate of Michael J. Kulz; )  
52. Tammy Lapierre, Adm. of the Estate of Keith R. )  
Lapierre, Tammy Lapierre, individually as wife )  
and surviving spouse of the decedent, Keith R. )  
Lapierre, and Tammy Lapierre, as mother and )  
next friend of Ryan S. Lapierre and Sarah R. )  
Lapierre, minor children of the decedent, Keith )  
R. Lapierre; )  
53. Judith Carver, Adm. of the Estate of Kristin L. )  
McQuarrie; )  
54. Richard Moreau and Jean Moreau, Co-Adm. of )  
the Estate of Leigh Ann Moreau; )  
55. Michael Reno, Esq., Adm. of the Estate of Beth )  
Mosczyński; )  
56. Richard H. Rakoski, Adm. of the Estate of )  
Theresa L. Rakoski, and Richard H. Rakoski, )  
individually as husband and surviving spouse of )  
the decedent, Theresa L. Rakoski; )  
57. Judy O'Brien, Adm. of the Estate of Robert L. )  
Reisner, III; )  
58. John J. Shaw, Exec. of the Estate of Rebecca )  
Shaw; )  
59. Veda Kerr, Adm. of the Estate of Victor L. )  
Stark; )  
60. Zachary S. Suffoletto and Diana L. )  
Shaughnessy, Co-Adm. of the Estate of )  
Benjamin J. Suffoletto, Jr.; )  
61. Zachary S. Suffoletto and Diana L. )  
Shaughnessy, Co-Adm. of the Estate of )  
Linda D. Suffoletto; )  
62. Honorina Washburn, Adm. of the Estate of )  
Kevin R. Washburn; )  
63. Cheryl Haines, Adm. of the Estate of Everett T. )  
Woodmansee, III; )  
64. Melinda J. Darby, Adm. of the Estate of )  
Matthew P. Darby, individually and as natural )  
parent, next friend and guardian of Jessica L. )  
Darby and Sarah M. Darby, minor children of )  
the decedent, Matthew P. Darby; )  
65. Susan W. Romanoff, Ex. of the Estate of Tracey )  
L. Romanoff and Jordan Blasbalg as guardian of )

- Joshua Blasbalg and Lindsey Blasbalg, minor children of the decedent, Tracey Romanoff; )  
66. Mark P. Hyer, Sr., Adm. of the Estate of Eric J. Hyer; )  
67. Annmarie Swidwa, Adm. of the Estate of Bridget M. Sanetti; )  
68. Stephen A. Gillett, Adm. of the Estate of Laura L. Gillett, individually and as father, next friend and permanent legal guardian of Jake T. Gillett and Jared J. Gillet, minor children of the decedent, Laura L. Gillett; )  
69. Suzanne Fox, Adm. of the Estate of Jeffrey Wood Martin; )  
70. Ellen-Marie Stowers, Adm. of the Estate of Jennifer L. Stowers; )  
71. Sharon Eaton, Adm. of the Estate of Edward B. Corbett, III; )  
72. Patricia Belanger, Ex. of the Estate of Dina A. DeMaio and Steven Beardsworth, temporary guardian of Justin Perry, minor child of the decedent, Dina A. DeMaio; )  
73. Robert J. Johnson, Sr., Adm. of the Estate of Derek B. Johnson; )  
74. Jacqueline Jacavone, Adm. of the Estate of Andrea L. Jacavone-Mancini; )  
75. Leo Smith and Doris Smith as Co-Adm. of the Estate of Dennis J. Smith; )  
76. Korina Arruda, Co-Adm. of the Estate of Christopher G. Arruda and as surviving spouse of the decedent, Christopher G. Arruda; )  
77. Gerard W. Fontaine and Rosanna C. Fontaine, Co-Adm. of the Estate of Mark A. Fontaine; )  
78. John J. Libera and Joanne T. Libera, Co-Adm. of the Estate of Stephen Matthew Libera; )  
79. Edward C. Ervanian as Adm. of the Estate of Edward E. Ervanian; )  
80. Kathleen Sullivan; )  
81. Scott J. Vieira, individually and as father and next friend of Crystle Vieira, his minor child; )  
82. Susan H. Chamberlin; )  
83. John F. Van Deusen, III, individually and as father and next friend of John F. Van Deusen, IV and Dylan Van Deusen, minor children of John F. Van Deusen, III; )  
84. Robert J. Luxton; )  
85. Elizabeth Arruda, individually and as mother and next friend of Zoey Retamoza, minor child of Elizabeth Arruda; )

86. Robert W. Rager, )
87. Joseph K. Kinan individually and Joseph K. )  
Kinan and Maureen Sullivan, as parents and )  
next friends of Kaitlin E. Sullivan, a minor; )
88. John F. Fairbairn, individually and as father )  
and next friend of John Fairbairn and Ariana )  
Fairbairn, minor children of John F. Fairbairn; )
89. Andrea F. Fairbairn, individually and as mother )  
and next friend of John Fairbairn, Ariana )  
Fairbairn, Amanda Melendez Durfee and )  
Christopher Melendez Durfee, minor children )  
of Andrea F. Fairbairn; )
90. Jose Roberto Demos, individually and as father )  
and next friend of Vanessa Santos Demos and )  
Samuel Santos Demos, minor children of Jose )  
Roberto Demos; )
91. Roberta O'Melia, individually and as mother )  
and next friend of Brendan O'Melia and )  
Christian O'Melia, minor children of Roberta )  
O'Melia; )
92. Fredrick P. Vallante, Jr., individually and as )  
father and next friend of Caitlyn Vallante and )  
Courtney Vallante, minor children of Fredrick )  
P. Vallante, Jr.; )
93. Kerrie-Lynn Beers, individually and as mother )  
and next friend of Jeremy T. Beers, minor child )  
of Kerrie-Lynn Beers; )
94. Francis J. Canillas; )
95. David Ciccone; )
96. Christopher J. Travis; )
97. Jon R. Schmidt, individually and as father and )  
next friend of Ryan Schmidt and Even Schmidt, )  
minor children of Jon R. Schmidt; )
98. David B. MacDonald, individually and as father )  
and next friend of David B. MacDonald, Jr., )  
minor child of David B. MacDonald; )
99. Paul du Fossé; )
100. John R. Arpin, individually and as father and )  
next friend of Ryan Arpin and Matthew Arpin, )  
minor children of John R. Arpin; )
101. Paula Gould; )
102. Kevin J. Beese, Sr., individually and as father )  
and next friend of Taylor Beese, Brittany Beese )  
and Kevin Beese, Jr., minor children of Kevin J. )  
Beese, Sr.; )
103. Shaun O'Donnell; )
104. Brian Loftus; )
105. Christopher Costa, individually and as father )

- and next friend of Leah Elizabeth Costa Turck, )  
minor child of Christopher Costa; )  
106. Georgette Giroux-Brown, individually and as )  
mother and next friend of Ben Giroux-Brown, )  
minor child of Georgette Giroux-Brown; )  
107. Stephanie Zannella; )  
108. Roberta J. Prete, individually and as mother and )  
next friend of Michael Falco, minor child of )  
Roberta J. Prete; )  
109. Catherine Randall, individually and as mother )  
and next friend of Douglas Randall and Meagan )  
Randall, minor children of Catherine Randall; )  
110. Edward Pezzelli, Jr., individually and as father )  
and next friend of Edward Pezzelli, III and )  
Hannah Pezzelli, minor children of Edward )  
Pezzelli, Jr.; )  
111. Paul Pezzelli, individually and as father and )  
next friend of Megan Pezzelli and Kyle Pezzelli, )  
minor children of Paul Pezzelli; )  
112. Joseph P. Barber, individually and as father and )  
next friend of Max Leili and Brandon Tully, )  
minor children of Joseph P. Barber; )  
113. Irina M. Gershelis, individually and as mother )  
and next friend of Brentin St. Jean and Colner )  
St. Jean, minor children of Irina M. Gershelis; )  
114. Rodney J. Gaumitz, individually and as father )  
and next friend of Tyler Gaumitz and Collin )  
Gaumitz, minor children of Rodney J. Gaumitz; )  
115. Donna Reis; )  
116. Ronald S. Schoepfer; )  
117. Richard J. Grace; )  
118. Tawnya Kelly, individually and as mother and )  
next friend of Andrew A. Jones and Aryanna F. )  
Greene, minor children of Tawnya Kelly; )  
119. Gregory Scott Dufour, individually and as father )  
and next friend of Ashley A. Dufour, minor )  
child of Gregory Scott Dufour; )  
120. John D. Wigginton; )  
121. Scott Dunbar; )  
122. Joseph Lusardi; )  
123. John Kudryk; )  
124. Brandon Fravala, individually and as father and )  
next friend of Nicholas James Douglas Fravala, )  
minor child of Brandon Fravala; )  
125. David Fravala; )  
126. Robin Petrarca; )  
127. Michael Stefani, individually and as father and )  
next friend of Jade Bartels, minor child of )

- Michael Stefani; )  
128. Hollie A. Pomfret and Justin Pomfret, )  
individually and as parents and next friends of )  
Alexis Pomfret and Skylar Pomfret, minor )  
children of Hollie A. Pomfret; )  
129. Justin Pomfret and Hollie A. Pomfret, )  
individually and as parents and next friends of )  
Alexis Pomfret and Skylar Pomfret, minor )  
children of Justin Pomfret; )  
130. Al Prudhomme; )  
131. Charlene Prudhomme; )  
132. Robert Harrington; )  
133. Robert A. Barlow; )  
134. Kristen A. Brown; )  
135. Patricia L. Clarke, individually and as mother )  
and next friend of Kira Lynn Clarke, a minor; )  
136. Gennaro Companatico, individually and as )  
father and next friend of Samantha Companatico )  
and Genna Companatico, minors; )  
137. Richard Cook, Sarah Amy Cook as wife of )  
Richard Cook and Richard and Sarah Cook as )  
parents and next friends of their minor child, )  
Cooper R Cook; )  
138. Richard DelSanto, individually and as parent )  
and next friend of his minor children, Jarred )  
Ferrara and Evan Parr; )  
139. Joseph A. DiBona, Jr.; )  
140. Linda M. Fisher, individually, Kevin J. Fisher, )  
individually and Linda M. Fisher and Kevin J. )  
Fisher as parents and next friends of Amber )  
Fisher, a minor; )  
141. Joseph M. Flynn; )  
142. Lisa C. Hale, individually and as mother and )  
next friend of Kylan Hale, a minor; )  
143. Laurie A. Hussey, individually, John Edward )  
Hussey, Jr., individually and Laurie A. Hussey )  
and John Edward Hussey as parents and next )  
friends of Hallie Ann Hussey and Rayanna )  
Leigh Hussey, minors; )  
144. Marc A. Lucier; )  
145. Matthew Mallette, individually, Jessica )  
Mallette, individually and Matthew Mallette and )  
Jessica Mallette as parents and next friends of )  
Joshua Mallette and Cameron Mallette, minors; )  
146. John Mangan, Jr. )  
147. Frances P. McMurray; )  
148. Christopher J. Nowicki; )  
149. Paul M. Pelletier; )

150. Michael Perreault; )
151. Christopher A. Peters; )
152. Jonathan Petrin; )
153. Jason Piscopio; )
154. John A. Rezendes, individually and as father )  
and next friend of Leah M. Rezendes and )  
Cameron M. Rezendes, minors; )
155. Catherine C. Sagesta, individually and as )  
mother and next friend of Christin Cameron )  
and Samantha Cameron, minors; )
156. George Solitro; )
157. Gary Stein, individually and as father and )  
next friend of Victoria Stein and Joshua Stein, )  
minors; )
158. Melissa A. Stephenson; )
159. Ray F. Beauchaine, Jr., and Ray F. Beauchaine, )  
Jr., as father and next friend of Ray F. )  
Beauchaine, III, Christopher R. Beauchaine )  
and Ahsley Beauchaine, minor children of )  
Ray Beauchaine, Jr.; )
160. Julie Belson; )
161. Kevin Blom; )
162. Milisa Bump, individually and as mother and )  
next friend of Dereck Bump and Sandra Dunn, )  
minor children of Milisa Bump; )
163. Jennifer Choquette; )
164. Nicole Conant; )
165. Stephanie Conant; )
166. Arthur J. Conway, III; )
167. Robert Cushman; )
168. Shauna Dell, and Claude Richard as husband )  
of Shauna Dell; )
169. Claude Richard and Shauna Dell as wife )  
of Claude Richard; )
170. Richard Dufour, Jr.; )
171. James Dufresne, individually and as father and )  
next friend of James J. Dufresne, Jr. and Bryan )  
Dufresne, minor children of James Dufresne; )
172. John Gibbs; )
173. Gregory Gray; )
174. Grant Hall; )
175. Michael Iannone; )
176. Adrian Krasinskas; )
177. Joseph LoBianco; )
178. David McGinn; )
179. Deborah Peduzzi, individually and Deborah )  
Peduzzi and Robert Peduzzi as parents and next )  
friends of Joseph Peduzzi and Ashley Peduzzi, )

- minors; )
180. Dawn Perry, individually and Stephen Perry, as )  
husband of Dawn Perry; )
181. Stephen Perry, individually and Dawn Perry, )  
as wife of Stephen Perry; )
182. Robin Precourt, and Justina Martin as minor )  
daughter at the time of injury to Robin Precourt; )
183. Gina Russo, and Gina Russo, as mother and )  
next friend of Alex Odsen and Nicholas Odsen, )  
minor children of Gina Russo; )
184. Milton Servis, II; )
185. Derrick Silva; )
186. Erik Sippy; )
187. David Steets, individually and as father and next )  
friend of David M. Steets, a minor; )
188. Raul Vargas and Melanie Vargas, individually )  
and as parents and next friends of Bryan Vargas, )  
a minor; )
189. Jennifer Viera; )
190. Andrew S. Richardson, Trustee in Bankruptcy )  
for Debra Wagner and Brian Wagner, )  
individually, and Debra Wagner and Brian )  
Wagner as parents and next friends of Krystal )  
Wagner, a minor; )
191. Gina M. Gauvin, individually and as parent and )  
next friend of Shayna S. Gauvin and Joseph )  
Jordan; )
192. Scott C. Moresco, individually, and in his )  
capacity as natural parent, next friend and )  
guardian of Tatiana Abel; )
193. Mario B. Cardillo, individually and Kathleen )  
M. Cardillo as wife of Mario B. Cardillo; )
194. Kathleen M. Cardillo, individually, and Mario )  
B. Cardillo as husband of Kathleen M. Cardillo; )
195. Tammy M. St. Hilaire; )
196. Robert P. Feeney; )
197. David D. Brennan, individually and Susan )  
Brennan as wife of David D. Brennan; )
198. Robert M. Cripe; )
199. Neil E. Cronin; )
200. Karen M. Gordon; )
201. Paul R. Gordon; )
202. Joseph A. Jones; )
203. Lee A. Karvonen; )
204. Theresia M. LaBree; )
205. Melissa J. Minor, individually and John Minor )  
as husband of Melissa J. Minor; )
206. Charles A. Oberg; )

207. Linda A. Ormerod; )
208. John S. Pinkham; )
209. Victoria L. Potvin; )
210. Kerrie A. Rock; )
211. Timothy J. Rossano; )
212. Nancy S. Trautz, individually and Chris C. )  
Trautz as husband of Nancy S. Trautz; )
213. Donovan Williams, individually and as parent )  
and next friend of Zachary Williams, Hayley )  
Williams and Dylan Williams; )
214. Sharon A. Wilson; )
215. Melanie Fontaine; )
216. Shawn Lourenzo and Mary Lourenco, as Legal )  
Guardian on behalf of Shawn Lourenco's )  
children, Bryan Lourenco, Brett Lourenco )  
and Brad Lourenco; )
217. Ashley A. Poland; )
218. Joseph Cristina; )
219. William Rancourt; )
220. Matthew Dussault; )
221. Paul Bertolo; )
222. Cynthia A. Nobles, individually, and Edward )  
D. Nobles as husband of Cynthia A. Nobles and )  
next friend of Ethan MacLeod and Brandon )  
Nobles; )
223. Edward D. Nobles, individually, and Cynthia A. )  
Nobles as wife of Edward D. Nobles and next )  
friend of Brandon Nobles; )
224. Donald N. Trudeau, individually, and Roberta )  
Trudeau as wife of Donald N. Trudeau; )
225. Jane C. Sylvester and Robert L. Sylvester, )  
Co-Adm. of the Estate of Jason Sylvester; )
226. Erin Pucino, individually and as mother and )  
next friend of Sterling Pucino, her minor child; )
227. Dorothy Pimentel, individually and as mother )  
and next friend of Savannah, Carlos, Jr., Cheyenne )  
and Cullin Pimentel, minor children of Charles )  
Pimentel, deceased; )
228. Kimberly Rich as Adm. of the Estate of Walter )  
E. Rich, individually and as next friend of )  
Christopher Rich, minor child of the decedent, )  
Walter E. Rich; )
229. Cathren M. Prunier, individually and as mother )  
and next friend of Peter Shays, Angela Shays )  
and Christopher Shays, her minor children; )
230. Glenn Therriault, Cristina Therriault as wife of )



- Glenn Therriault and Glenn Therriault as father )
- and next friend of Maya Therriault, his minor )
- daughter; )
- 231. Bruce Cormier; )
- 232. Donna Cormier; )
- 233. Brenda Cormier; )
- 234. Anthony Manzo, Adm. of the Estate of Judith Manzo )
- and as father and next friend of Brianna B. Manzo )
- and Anthony Manzo, II, minor children of Judith )
- Manzo; )
- 235. Raymond Mattera and Jaromir Housa, Co-Adm. )
- of the Estate of Tammy A. Mattera-Housa, Jaromir )
- Housa as surviving spouse and as father and next )
- friend of Nicholas Housa, and Raymond Mattera )
- and Diane Mattera as parents and next friend of )
- Nathan Robert Mattera; )
- 236. Erin Whalen; )
- 237. Stephanie Simpson, individually and as next friend )
- of her minor children, Matthew Simpson, David )
- Simpson and Tayla Simpson; )
- 238. Richard Wiggs; )
- 239. John F. Pickett, Adm. of the Estate of Matthew J. )
- Pickett; )
- 240. Michael R. Ricardi )

Plaintiffs, )

vs. )

- D1. Jeffrey Derderian; )
- D2. Michael Derderian; )
- D3. DERCO, LLC; )
- D4. Howard Julian; )
- D5. Triton Realty Limited Partnership; )
- D6. Triton Realty, Inc.; )
- D7. Raymond Villanova; )
- D8. Jack Russell; )
- D9. Jack Russell Touring, Inc.; )
- D10. Paul Woolnough; )
- D11. Manic Music Management, Inc.; )
- D12. Knight Records, Inc.; )
- D13. Daniel Biechele; )
- D14. Anheuser-Busch, Incorporated; )
- D15. Anheuser-Busch Companies, Incorporated; )
- D16. McLaughlin & Moran, Inc.; )
- D17. WHJY, Inc. and Capstar Radio Operating )
- Company; )
- D18. Clear Channel Broadcasting, Inc.; )

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|------|---|---|
| D19. | Denis P. Larocque, Fire Inspector;          | ) |
| D20. | Anthony Bettencourt;                        | ) |
| D21. | Malcolm Moore, in his capacity as           | ) |
|      | Finance Director of the Town of             | ) |
|      | West Warwick;                               | ) |
| D22. | State of Rhode Island;                      | ) |
| D23. | Irving J. Owens, Fire Marshal;              | ) |
| D24. | Brian Butler;                               | ) |
| D25. | TVL Broadcasting, Inc.;                     | ) |
| D26. | STC Broadcasting, Inc.;                     | ) |
| D27. | Barry H. Warner;                            | ) |
| D28. | Luna Tech, Inc.;                            | ) |
| D29. | High Tech Special Effects, Inc.;            | ) |
| D30. | American Foam Corporation;                  | ) |
| D31. | Leggett & Platt, Incorporated;              | ) |
| D32. | L&P Financial Services Co.;                 | ) |
| D33. | General Foam Corporation;                   | ) |
| D34. | GFC Foam, LLC;                              | ) |
| D35. | Foamex LP;                                  | ) |
| D36. | Foamex International Inc.;                  | ) |
| D37. | FMXI, Inc.;                                 | ) |
| D38. | PMC, Inc.;                                  | ) |
| D39. | PMC Global, Inc.;                           | ) |
| D40. | JBL Incorporated f/k/a James B. Lansing     | ) |
|      | Sound, Incorporated d/b/a JBL Professional; | ) |
| D41. | Essex Insurance Company;                    | ) |
| D42. | Multi-State Inspections, Inc.;              | ) |
| D43. | High Caliber Inspections, Inc.;             | ) |
| D44. | Underwriters at Lloyd's, London;            | ) |
| D45. | Gresham & Associates of R.I., Inc.;         | ) |
| D46. | ABC Bus, Inc. d/b/a ABC Bus Leasing, Inc.;  | ) |
| D47. | Superstar Services LLC;                     | ) |
|      |   | ) |
|      | Defendants.                                 | ) |

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## **VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT**

1. All of the Plaintiffs listed in plaintiff groups 1-240, inclusive, above and all of the defendants listed as D1-D47, inclusive, above are parties in Civil Action No. 04-312L pending in United States District Court for the District of Rhode Island (which was originally filed in this Court and subsequently removed to the Federal Court). All Plaintiffs suffered either direct or derivative injury from The Station Nightclub Fire on February 20, 2003. All of the Plaintiffs, either individually or in representative capacities, seek damages in that action for injuries and deaths resulting from The Station Nightclub Fire.

2. Among the captioned defendants in the Federal Court civil action and this declaratory judgment action is the State of Rhode Island.

3. Defendant State of Rhode Island has filed criminal charges against Michael Derderian, Jeffrey Derderian and Daniel Biechele for the deaths of the 100 persons killed in the fire, and that matter is presently pending before the Superior Court (Darigan, J.).

4. Defendants State of Rhode Island and/or Town of West Warwick, have obtained from the fire site a limited amount of polyurethane foam which is the same foam that had been attached to the walls of The Station Nightclub as soundproofing material and was a major contributor to the extremely rapid spread of the fire.

5. On or about September 24, 2004 in open court in the state criminal proceeding, the Attorney General's office on behalf of the State of Rhode Island represented on the record that it would inform the undersigned Plaintiffs' counsel of any intention to perform testing on the polyurethane foam in its possession so that Plaintiffs' counsel could take whatever action they deem appropriate.

6. The Attorney General's office has now informed Plaintiffs' counsel that it plans to conduct further destructive testing that will consume forty-eight (48) square feet of the approximately seventy-one (71) square feet of foam in the State's possession.

7. The Superior Court has scheduled a conference of parties to the criminal proceeding to deal with issues regarding the testing of the foam on January 14, 2005.

8. Plaintiffs are concerned that the foam consumed by the planned destructive testing performed on behalf of the State in the criminal matter will preclude Plaintiffs' experts from performing the testing necessary to determine the foam's chemical composition and other characteristics necessary for Plaintiffs to prove their claims against the State, the criminal defendants and other defendants in the civil proceeding.

9. The interests of the parties in the civil proceeding in preserving and protecting the foam so that an adequate amount will be available for inspection and testing are clearly adverse and constitute a legitimate, justiciable controversy.

10. Plaintiffs are unable to intervene to protect their interests in the criminal matter.

11. Plaintiffs will be irreparably harmed if the limited available foam is not handled in a manner which protects the interests of all parties.

12. Plaintiffs have no adequate remedy at law.

13. The Rhode Island Supreme Court has ruled in the case of State of Rhode Island vs. Cianci, 496 A.2d 139 (R.I. 1985), that the appropriate remedy for adjudicating the rights of interested parties in controversies incidental to criminal prosecutions is a declaratory judgment action; accordingly, Plaintiffs have filed the instant declaratory judgment action.

14. The issues raised in this complaint are appropriate for resolution under the Uniform Declaratory Judgments Act, R. I. G. L. § 9-30-1 et. seq.

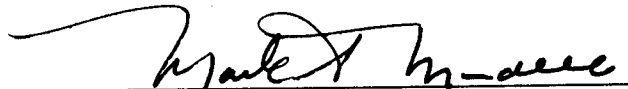
WHEREFORE, Plaintiffs request the following relief:

1. That the Court declare that Plaintiffs have a protectible interest in being heard prior to any further testing of the foam.
2. That the Court preliminarily and permanently enjoin the State of Rhode Island and the Town of West Warwick, by and through their agents, servants, employees and others acting on their behalf from dissipating, destroying, testing or otherwise disposing of or transferring to any party any polyurethane foam seized from the site of The Station Nightclub Fire until after Plaintiffs receive notice of the State's intention (with testing methods, available quantities and protocols set forth) and Plaintiffs have had an opportunity to be heard by the Court on the subject including the presentation of expert testimony, if necessary.
3. That the Court order such additional relief as is appropriate to protect the interests of the parties.

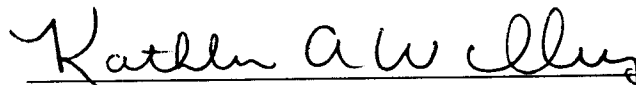
### **VERIFICATION**

I, Mark S. Mandell, being duly sworn, do hereby depose and say:

1. That I am co-counsel for Plaintiffs #13d and e, #17 through #63, inclusive, #133 through #190, inclusive, #225 through #233, inclusive, and #240;
2. That I have read the above verified complaint and that its allegations are true; as to those allegations made on information and belief, those allegations are true to the best of my knowledge and belief.

  
Mark S. Mandell

Signed and sworn to before me this 5 day of January, 2005.

  
Kathleen A. W. Kelly  
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My Commission Expires: 6-26-05

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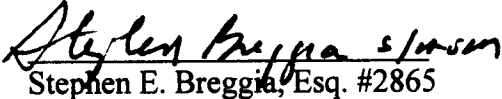
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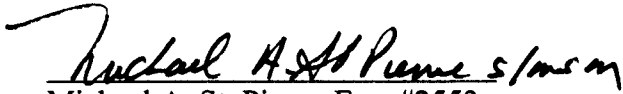
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## CERTIFICATION

I hereby certify that an exact copy of the within document was electronically mailed to the following individuals on this 5<sup>th</sup> day of January, 2005.

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